phate Co. v. *Farmers' Fertilizer Co.* (1913) 94 S. C. 212, 77 S. E. 863. However, the present English view seems to be that the qualifying phrase prevents the recital from being even *prima facie* evidence of the quantity. *New Chinese Antimony Co.* v. *Ocean Steamship Co., supra.* On the other hand, where, as in the instant case, the goods are in closed containers, it would be practically impossible for the carrier to open each box to ascertain the amount within. In such case, the bill of lading with the words "contents unknown" or a like qualification admits only the visible exterior and is not even *prima facie* evidence that the package contains the described quantity. *Isdaner* v. *Philadelphia & Reading Ry.* (1913) 54 Pa. Super. Ct. 509; *Miller* v. *Hannibal & St. Joseph R. R.* (1882) 90 N. Y. 430.

CONFLICT OF LAWS—RULE OF THE PLACE OF PERFORMANCE—SUBSEQUENT ILLEGALITY.—The defendants, an English Company, entered into a charter party in England with the plaintiffs, a Spanish Company, through the agents of the latter, providing for the carriage by the plaintiffs' ship of jute from Calcutta to Spain. The freight charge was £50 per ton, one half payable in London upon the departure of the vessel from Calcutta, the other half payable by the receivers of the cargo at the port of discharge in Spain. The charter party provided for the arbitration of disputes in London. After the making of the agreement, Spain decreed that the maximum amount of freight payable on jute imported into Spain should be 875 *pesetas* per ton, a sum less than £50 per ton. The plaintiffs' steamer sailed from Calcutta and the defendants paid one half of the freight to the plaintiffs' agents in London. The receivers in Spain refused to pay more than 875 *pesetas* per ton and the plaintiffs sue for the balance. *Held,* for the defendants. *Ralli Brothers* v. *Compania Naviera Sota y Aznar* (1920) 25 Times Commercial Cases 227.

In a purely domestic transaction it is well settled that subsequent illegality excuses both parties from performance. *Metropolitan Water Board* v. *Dick, Kerr & Co.* [1918] 1 A. C. 119; *Public Service Electric Co.* v. *Board of Public Utility Com'rs* (1915) 87 N. J. L. 128, 93 Atl. 707. In the early English cases, when a contract was to be performed in whole or in part in a jurisdiction where performance became illegal according to the foreign law, the parties were not excused from performance. *Sjoerds* v. *Luscombe* (1812) 16 East 201; *Barker* v. *Hodgson* (1814) 3 M. & S. 2677. American courts still adhere to this doctrine. *Tweedie Trading Co.* v. *James P. McDonald Co.* (D. C. 1902) 114 Fed. 985; *Richards & Co.* v. *Wreschner* (1916) 174 App. Div. 484, 156 N. Y. Supp. 1054. The more recent English cases have released parties from their obligations where the contract was illegal according to the *lex loci solutionis. Cunningham* v. *Dunn* (1878) L. R. 3 C. P. D. 443; *cf. Ford* v. *Cotesworth* (1870) L. R. 5 Q. B. 544. Assuming that the court's interpretation of the charter party involved in the instant case is accurate, these later authorities are controlling. However, non-performance of contracts cannot be excused in every case merely on the ground of illegality created by foreign law, for in many cases such illegality may have been created solely as a form of political retaliation. See 2 Parsons, *Contracts* (9th ed. 1904) *754. In the absence of such special circumstances, sound policy dictates the recognition of the positive laws of a foreign country, and where performance is rendered illegal the contracting parties should be excused. Much of the confusion of the courts arises from confounding "impossibility in point of fact" with so-called "impossibility in point of law".

CRIMINAL LAW—TRIAL BY JURY—DIRECTED VERDICT.—In a criminal action punishable by imprisonment, where all the facts were undisputed, a federal judge

charged the jury: "In conclusion I will say that a failure to bring in a verdict in this case can arise only from a wilful and flagrant disregard of the evidence and the law as I have given it to you and a violation of your obligation as jurors. Of course, gentlemen, I cannot tell you in so many words to find the defendant guilty, but what I say amounts to that." The defendant excepted to this charge. There was a verdict of guilty. On appeal, it was *held,* Chief Justice White and Justices Brandeis and Day dissenting, although a verdict of guilty could not be directed, at most the error was purely formal, and judgment will be affirmed. *Horning* v. *District of Columbia* (1920) 41 Sup. Ct. 53.

A charge "that if the jury believe the evidence beyond a reasonable doubt it should find the defendant guilty", has been generally upheld in criminal cases where all the evidence points to guilt. (1916) 16 COLUMBIA LAW REV. 594. But in the federal courts and according to the weight of authority, under a plea of not guilty, the court may never direct a verdict of guilty. (1916) 16 COLUMBIA LAW REV. 594, 595 and n. 11; *United States* v. *Taylor* (C. C. 1882) 11 Fed. 470; *Atchison, etc. Ry.* v. *United States* (C. C. A. 1909) 172 Fed. 194. Federal judges are allowed much latitude in impressing juries with their duty. *Suslak* v. *United States* (C. C. A. 1914) 213 Fed. 913, 919. But the court may not charge that the facts are legally conclusive against the defendant in any respect. *Cummins* v. *United States* (C. C. A. 1916) 232 Fed. 844. Nor may the court draw a conclusion of guilt by argument and inference, even though the facts are undisputed. *Blair* v. *United States* (C. C. A. 1917) 241 Fed. 217. It may not coerce a verdict. *Peterson* v. *United States* (C. C. A. 1914) 213 Fed. 920 (the jury told that the case should be finally disposed of as to all the defendants). A charge which holds the jury up to ridicule unless it returns a verdict of guilty is erroneous. *Rudd* v. *United States* (C. C. A. 1909) 173 Fed. 912. In other words, the court is not privileged to direct a verdict indirectly, any more than directly. In the instant case, that the charge might well have unduly influenced the jury is obvious. Moreover, the distinction which the majority opinion attempts to draw between a charge which directs a verdict in so many words and a charge which "amounts to" a directed verdict is absurd. Furthermore, the court has here violated no mere technical right of the accused. Trial by jury in a criminal action is guaranteed by the Federal Constitution. *Callan* v. *Wilson* (1888) 127 U. S. 540, 8 Sup. Ct. 1301; see *Blair* v. *United States, supra,* 230. It cannot even be waived where the punishment may be imprisonment. *In re Virch* (1916) 5 Alaska 500. In the instant case, the statement of the court that "if the defendant suffered any wrong, it was purely formal" seems as erroneous as the conclusion reached.

DIVORCE—ALLOWANCE OF COUNSEL FEES—IMPLICATION OF COUNSEL.—The husband obtained a divorce on the ground of extreme cruelty. The trial court failed to make a finding on the evidence pointing toward the wife's misconduct with her lawyer. The husband appeals from an order directing payment of counsel fees for services to be rendered by her attorney on appeal. *Held,* the trial court's failure to make this finding was error. If the counsel for the wife was responsible for acts of cruelty on her part which might be the basis of a divorce on that ground, no counsel fee should have been allowed. *Callahan* v. *Callahan* (Ida. 1920) 192 Pac. 660.

Since at common law the husband obtained the wife's property, counsel fees were allowed to enable her to maintain her action or defense. 2 Bishop, *Marriage, Divorce & Separation* (1891) § 992. Although the property rights of married women have now been enlarged, the practice as to fees has sur-